

UNITED STATES OF AMERICA

v.

DAVID M. HICKS

PO 103 - Hicks

**Presiding Officer Direction to Respond  
to Certain Questions**

**Military Commission as Competent  
Tribunal**

**September 22, 2005**

**I.** The Presiding Officer directs that not later than Oct 11 05, counsel for both sides in the above captioned case:

a. Respond to this filing by an attachment to an email to the Assistant and the Presiding Officer. The response shall contain the filing number and designation "PO 103 - Hicks - (Government) (Defense) Response to Presiding Officer Direction to Respond to Certain Questions - Military Commission as Competent Tribunal." Once both responses are received, the APO will provide them to counsel for both sides. The parties will not submit replies to the responses of opposing parties unless they have leave of the Presiding Officer or the Presiding Officer directs.

b. *or in the alternative to the above option*, file a motion in accordance with POM # 4-3 within the same time frame as indicated above, provided that the motion answers the questions presented.

*Note:* The originally planned reply date was unilaterally extended by the Presiding Officer, without request by the Defense, to accommodate the known absence of MAJ Mori on OCONUS leave.

**II.** The responses are being directed so that the Presiding Officer may receive the considered views of counsel on this issue which he believes to be important to the provision of a full and fair trial. The questions have been framed to focus the replies of counsel, and they do not purport to state the Presiding Officer's views on the matter. All counsel must ***note that these directed responses are not a motion or request for relief.*** If counsel desire to file a motion or request for relief, they must follow the procedures in POM 4-3.

**III. Background.** The D.C. Circuit recently said, in relation to *United States v. Hamdan*, "We therefore see no reason why Hamdan could not assert his claim to prisoner of war status before the military commission at the time of his trial and thereby receive the judgment of a 'competent tribunal' within the meaning of Army Regulation 190-8." *Hamdan v. Rumsfeld*, 415 F.3d 33, 43 (D.C. Cir. 2005)

#### **IV. Questions presented:**

**A. Question 1:** Is the Military Commission a competent tribunal to decide the accused's status under the provisions of Article 5, GPW.

**B. Question 2:** Assuming the answer to question 1 is in the affirmative, who has the burden of proof to prove that the accused is entitled, or not entitled, to prisoner of war status?

**C. Question 3:** Assuming the answer to question 1 is in the affirmative, who makes that decision - the Presiding Officer alone, or members other than the Presiding Officer, or all members of the Commission?

**V.** The format of the response shall be that convenient to the parties in a Word document as an attachment to the forwarding email. In separate paragraphs for each question presented, the parties will provide:

- A. A succinct answer to the question.
- B. The basis for the answer citing authority.
- C. Include desired discussion and/or argument.

**VI.** If a party wishes the Presiding Officer to consider any matters that are required to be attached, they must be accounted for as provided in paragraph 5i, POM# 4-3, and attached in accordance with paragraph 6, POM# 4-3.

Peter E. Brownback, III  
COL, JA, USA  
Presiding Officer